

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RUBEN BARNETT

COMPLAINANT

v.

SOUTH ANDERSON WATER DISTRICT

DEFENDANT

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) CASE NO. 95-397
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O R D E R

On September 16, 1995, Ruben Barnett filed a complaint against South Anderson Water District ("South Anderson") concerning South Anderson's reimbursement policy as regards a water line extension for which he paid. South Anderson was directed by Order of the Commission to Satisfy or Answer the Complaint. South Anderson filed its answer on September 25, 1995. On November 3, 1995, the parties were ordered to file additional information with the Commission. Both parties filed timely responses. On January 5, 1996, the Commission by Order sought clarification of those responses. The parties again responded accordingly.

FINDINGS OF FACT

South Anderson is a water district organized pursuant to KRS Chapter 74 that owns, controls, and operates facilities used in the distribution of water to the public for compensation. It is a utility subject to Commission jurisdiction pursuant to KRS 278.010(3)(d), KRS 278.015, and KRS 278.040(2). Its offices are

located in Lawrenceburg, Kentucky. Mr. Barnett resides at 1560 Willow Creek Road, Lawrenceburg, Kentucky.

In 1993, Mr. Barnett and South Anderson began discussions concerning water line extensions to properties owned by Mr. Barnett on Willow Creek Road and on Rice Road in Anderson County. Mr. Barnett attended South Anderson's October 21, 1993 board meeting and asked how he could "sell off lots on Willow Creek Road and have the water line put in himself and give it to the water district to maintain."¹ A project on Rice Road was proposed shortly thereafter. It is the Rice Road line extension that precipitated this complaint.

The Rice Road project involved a 4,770 feet, three inch water line extension to property owned by Mr. Barnett for which Mr. Barnett paid South Anderson \$21,495.00 on November 4, 1994. No written agreement pertaining to the project, if there ever was one, could be found. Division of Water approval for the project was requested on April 5, 1994, and granted on May 17, 1994. Construction on the project began June 7, 1995, and was completed on approximately July 28, 1995.

The complaint arises out of a disagreement over which reimbursement policy should be applied to the extension. 807 KAR 5:066, Section 11(2), addresses extensions of a utility's main to serve an applicant or group of applicants when the extension amounts to more than 50 feet per applicant. Pursuant to 807 KAR

¹ South Anderson October 21, 1993 board meeting minutes.

5:066, Section 11(2)(b), customers who paid for such service are to be reimbursed under one of two plans. The utility is to include the plan it chooses in its filed tariff. South Anderson's tariff effective March 21, 1991, applied 807 KAR 5:066, Section 11(2)(b)(1), to such extensions.² South Anderson's tariff, effective January 1, 1994, applies 807 KAR 5:066, Section 11(2)(b)(2), to such extensions.³

² 807 KAR 5:066, Section 11(2)(b)(1): Each year, for a refund period of not less than ten (10) years, the utility shall refund to the customer or customers who paid for the excess footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions and laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

³ 807 KAR 5:066, Section 11(2)(b)(2): As an alternative to the refund plan outlined in subparagraph 1 of this paragraph, the utility may use the following plan: for a period of five (5) years after construction of the extension, each additional customer whose service line is directly connected to the extension installed, and not to extensions and laterals therefrom, shall be required to contribute to the cost of the extension based on a recomputation of both the utility's portion of the total cost and the amount contributed by the customers. The utility shall refund to those customers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each customer connected to the extension. All customers directly connected to the extension for a five (5) year period after it is placed in service shall contribute equally to the cost of construction of the extension. In addition, each customer shall pay the approved tap-on fee applicable at the time of his application for the meter connection. The tap-on fee shall not be considered part of the refundable cost of the extension and may be changed during the refund period. After the five (5) year refund period expires, any additional customer shall be connected to the extension for the amount of the approved tap-on fee only. After the five (5) year refund period expires, the utility shall be required to make refunds for an additional five (5) year period in accordance with subparagraph 1 of this paragraph.

According to South Anderson, the only reimbursement policy discussed with Mr. Barnett was that contained in 807 KAR 5:066, Section 11(2)(b)(1). South Anderson states that even though 807 KAR 5:066, Section 11(2)(b)(2), is a part of its tariff, it has always and only reimbursed based upon 807 KAR 5:066, Section 11(2)(b)(1), with the exception of projects involving extensions to real estate subdivisions, in which case 807 KAR 5:066, Section 11(3), has been applied.⁴

Mr. Barnett argues that although he was initially told that 807 KAR 5:066, Section 11(2)(b)(1), would apply to the Rice Road extension, after he inquired about other options he was mailed a new tariff sheet containing 807 KAR 5:066, Section 11(2)(b)(2), with no explanation attached. He concluded that his request had been granted and that the reimbursement policy contained on the tariff sheet mailed to him would apply to the Rice Road project. He argues that since he had an understanding with South Anderson and since he paid for the extension after the second tariff went into effect, he should be reimbursed pursuant to 807 KAR 5:066, Section 11(2)(b)(2).

⁴ 807 KAR 5:066, Section 11(3): An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions and laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

CONCLUSIONS OF LAW

Both parties are in error. Neither 807 KAR 5:066, Section 11(2)(b)(1), nor 807 KAR 5:066, Section 11(2)(b)(2), apply to the extension in question. According to South Anderson's January 17, 1996, response to the Commission's January 5, 1996 Order, the line extension in question was installed to serve "a proposed real estate subdivision." South Anderson stated that Mr. Barnett divided his property on Rice Road into eight tracts, and has in fact already sold three of those tracts to three different parties. South Anderson enclosed a copy of the plan of subdivision certified by Mr. Barnett on January 13, 1995, as well as copies of the Deeds of Conveyance for the three tracts sold by Mr. Barnett. Mr. Barnett, in his January 18, 1996 response to the Commission's January 5, 1996 Order, also stated that the line was extended to eight lots on Rice Road that he had subdivided.

As the line extension in question was to a proposed real estate subdivision, the applicable regulation is thus 807 KAR 5:066, Section 11(3). South Anderson's tariff in fact contains a provision, effective March 21, 1991, substantially similar to 807 KAR 5:066, Section 11(3). Neither 807 KAR 5:066, Section 11(2)(b)(1), nor 807 KAR 5:066, Section 11(2)(b)(2), are relevant to the question at issue in this proceeding.

Since 807 KAR 5:066, Section 11(3), is the applicable regulation, for every new customer connected to the line extension on Rice Road, South Anderson should refund to Mr. Barnett an amount equal to the cost of 50 feet of that line. Such refunds should be

given for ten years from the date construction of the line was completed, which was approximately July 28, 1995.

South Anderson should be advised that had the extension in question not been to a real estate subdivision, 807 KAR 5:066, Section 11(2)(b)(2), would, as Mr. Barnett contends, apply. When South Anderson filed that provision in its tariff, it superseded the provision already contained in South Anderson's tariff regarding line extension reimbursements, which followed 807 KAR 5:066, Section 11(2)(b)(1). A utility cannot have both alternatives filed in its tariff, but must choose one or the other.

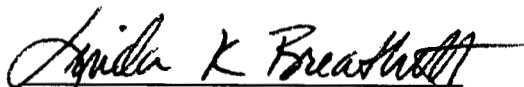
IT IS THEREFORE ORDERED that:


1. South Anderson shall apply 807 KAR 5:066, Section 11(3), to the line extension on Rice Road paid for by Mr. Barnett, and Mr. Barnett shall be reimbursed accordingly thereunder.

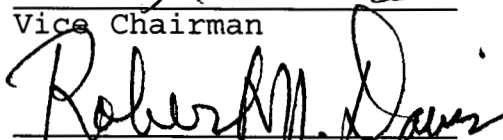
2. South Anderson shall, within 30 days, take appropriate action to conform the provisions of its tariff concerning extensions to the conclusions of this Order.

Done at Frankfort, Kentucky, this 6th day of March, 1996.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director